

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6997 of 1994

Date of decision: 25-9-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOKILABEN HARSHADRAI PANCHOLI

Versus

DEVELOPMENT COMMISSIONER

Appearance:

MS PAURAMI B SHETH for Petitioner
Ms. Siddhi Talati for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/09/97

ORAL JUDGEMENT

The petitioner, having apprehension of termination of her service as junior clerk in the office of the District Panchayat, Surendranagar, filed this special civil application on 16-5-1994. This special civil application has come up for admission before the court on 17-5-1994. The petition was admitted and ad interim relief restraining the respondents from implementing the order of termination was granted.

2. The facts of the case in brief are that the husband of the petitioner who was working as Supervisor in Public Works Department of the District Panchayat, Surendranagar, had expired on 29th June, 1978 while he was in service. He left behind him the petitioner, his widow, and four daughters and a son. Having put in such a precarious condition the petitioner had no option except to go for compassionate appointment so that she may earn to bring up her five children by providing them bare necessities of life. Admittedly the petitioner was given appointment as junior clerk on compassionate ground on 4-1-1980. One of the conditions of appointment was that the petitioner has to clear pre-service training examination within the stipulated chances. It is also not in dispute that the petitioner has availed of five chance of appearing in the pre-service training examination but she failed in all. Consequent upon her failure in the last chance, her services came to be terminated. Hence she filed this petition as aforesaid for the relief of restraining the respondents from terminating her services.

3. Reply to the special civil application has been filed and defence has been taken therein which has to be briefly stated as under:

First, grace chances can be given to the petitioner only after termination of her services, and in case she passes then only she can be taken back in service. Second, the Gujarat Panchayats Services (Clerk, Typist, Computer) Departmental Examination Service Conditions Rules, 1984 are also applicable to the holders of the posts, who have been given appointment on compassionate ground. This court has taken consistent view that the examination has to be passed in the prescribed chances and period and in case a candidate fails to do so then the only consequence thereof is of termination of service. So far as grace chances are

concerned, that can only be given to him or her after termination of service. Termination of service on the ground of failure to pass examination cannot be said to be illegal or arbitrary.

4. In the reply to the special civil application the respondent District Panchayat has made reference to certain decision of this Court, copies whereof were also produced. I have read all the said judgments of this Court, and I find that none of the case relates to appointment on the post of junior clerk on compassionate ground.

5. Learned counsel for the petitioner made statement before this Court which is not controverted by the counsel for the respondent that the petitioner has to her credit now only 3 to 4 years service. It is unfortunate that neither the petitioner nor the respondents have brought on record of this special civil application the date of birth of the petitioner. However, if one goes by the facts of the case, then her husband has expired in the year 1978, and at that time he was having 20 years service. So he would have been appointed some time in the year 1958, and if we go by the normal age eligibility for appointment as 18 years, then at that time of his appointment in the year 1958 his age would not have been less than 18 years, though it may be towards higher side. Now, if we calculate the age of the petitioner with reference to this evidence, she may be younger to him by two or three years. This is only for the purpose of ascertaining the correctness of the statement made by the Counsel for the petitioner. The statement made by the counsel for the petitioner stands to some logic and to certain extent it would be correct.

6. Learned counsel for the petitioner contended that the petitioner should have been given sixth chance or two more chances with the approval of the General Administration Department, which she has not been afforded, and therefore termination of her service is illegal and arbitrary. On the other hand the counsel for the respondent contended that that the petitioner cannot claim 6th chance as of right. First she has to go out of employment and then she can be given sixth chance and on her passing the examination, she maybe taken back in service, but on this ground she cannot claim continuance in service as of right. Concluding his submission the counsel for the respondent contended that the petitioner cannot take any exception of the order of termination of her services and this court may not interfere with the said order.

7. The facts which are not in dispute are that the petitioner has been given appointment on 4-1-1981 and for all these years i.e. 17 years and 10 months she is in service. Now she may have three or four years left in service. If we go by the facts her age would have been not less than +50 years in all circumstances. Compassionate appointments are made or given in Government service as well as in panchayat service under Government Resolution. The service rules which have been framed under Article 309 of the Constitution of India for Government service and under the provisions of the Panchayat Act for the Panchayat service nowhere contain any provision for giving appointment on compassionate ground. Appointment on compassionate grounds are being given for the purpose of providing immediate financial assistance to the family where the only bread winner thereof has expired. These appointments are given without going through any process of selection. Though the provision for compassionate appointment may not stand the test of Articles 14 and 16 of the Constitution, still it has been taken to be reasonable restriction on the fundamental rights of the citizens, i.e. equal opportunity to compete for public employment. The counsel for the respondent, except the terms contained in the appointment order and one Resolution, has failed to show any other provision which specifically provides that all compassionate appointments are subject to all the rigors of service conditions which are to be there in respect of appointees who have been recruited under the recruitment rules. Even a person who has been given appointment on compassionate ground is not required to be placed on probation i.e. his appointment is not on probation. Probation is one of the important service conditions and the object behind it is to see the performance of the candidate to retain him in service. During the period of probation normally a candidate has to undergo all these examinations. The distinction which is there in the appointments on compassionate ground and the appointments in the regular way under the Rules is to be taken to its logical conclusion, meaning thereby, so that the purpose for which appointments have been made may not be frustrated at a subsequent stage. To be clear I may explain that once compassionate appointment is given it cannot be taken away at a later point of time under the pretext of non-fulfilling certain service conditions. When these appointments are not subject to selection and probation, then I fail to see what for a further condition of passing of pre-service training examination has to be put. If we go by the facts of the present case it will speak for its own story as to under what circumstances this poor lady has passed her life and how much burden

she is carrying. The counsel for the respondent fairly admitted that so far as the performance of the petitioner as junior clerk is concerned there is no complaint. Then how far it is justified to enforce the condition of passing pre-service training examination by this lady and enforcing it to the extent that non-passing thereof has resulted in termination of her services.

6. It is not a case where by putting service for 17 years with the department the petitioner has been relieved of the burden which had come on her shoulder on the death of her husband. Still the condition of the family would not have improved to the extent where the petitioner could have afforded to accept termination of her services. The way and at the stage where her husband departed, burdening the shoulder of the petitioner with the responsibility of 4 daughters and one son, at the time when she may be of the age of 40 years, and in addition to that she has to discharge all other domestic duties, and looking to the facts whether it is expected of the petitioner to pass all these examinations? If a person is in his or her young age it is understandable that he or she may pass the examination before a particular age. After the age of 40 or 50 years it is difficult for a person to pass the examination. What for the examinations are to be passed is another important question. As it is born out from the record of the special civil application, examinations are meant for maintaining efficiency in service. Efficiency is also brought in by experience. If the case of compassionate appointment made by relaxation of service conditions, I fail to see any justification in putting the condition by the respondents of passing of pre service examination by the petitioner. Otherwise it will result in giving benefits by one hand and taking away the same by another hand. Compassionate appointments are given to a needy person, by relaxation of general service conditions and recruitment rules.

7. Taking into consideration the totality of the facts of this case I am of the opinion the rules, reference to which has been made above, nowhere provides that this category of employees are also required to pass the examination. These examinations are meant only for those persons who have been appointed under regular recruitment rules. Appointment of the petitioner, which was made on compassionate ground, is not made under the said service rules, but it has been made under Government Resolution. So specifically those rules were not made applicable to this category of employees. Even if there is some resolution of the Government which provides for

passing of the examination by these persons, then it cannot be said to be reasonable and justified. Compassionate appointees should not be subjected to any service conditions, non-fulfilment of which results in termination of the service. However, that does not mean that their services may not be dispensed with in all circumstances. Their services can certainly be dispensed with where it is found that their work is not satisfactory or they have committed some misconduct. But only on the ground of non-passing of pre-service training examination services of such persons cannot be terminated. It is true that the petitioner has been given appointment subject to the condition of passing the aforesaid examination, but these are unilateral conditions imposed on the petitioner. In view of the facts aforesaid these conditions cannot be taken to a condition of appointment of the petitioner. It seems to be a case where order of appointment on compassionate ground has also been given in the same format in which appointments are given to the candidates who have been selected by process of selection under the rules.

8. Lastly I have been given out that there is certain relaxation in the condition of passing pre-service training examination by the employees, and that illustration is of the employees who have crossed the age of 45 years. If we go by the resolution in that regard, then the day on which the petitioner's services were terminated, she may have crossed the age of 45 years, or in any eventuality today she has certainly crossed that age. It is true that for the last three years the petitioner has continued in service because of the interim relief of this court. What is the age of the petitioner now can be taken into consideration for the purpose of saying whether her termination is necessary only on the ground of her not passing the pre-service training examination and more so when admittedly she has not given any chance of complaint so far as performance of her duties as junior clerk are concerned.

9. The order of termination of service of the petitioner has not been produced on record of this special civil application by the petitioner, nor the respondents have produced a copy of the order by which her services were terminated. However, in para 13 of the reply respondent No.2 has stated that the order of termination of services of the petitioner has been made on 17th May, 1994 and the same has been sent to respondent No.3 for serving the same on the petitioner. So it is an admitted fact that the services of the petitioner were terminated under the aforesaid order.

10. Taking into consideration totality of the facts of the case, the special civil application deserves acceptance and the same is allowed. The order of the competent authority, Surendranagar District Panchayat dated 17-5-1994, reference to which has been made in para 13 of the reply is quashed and set aside. Rule made absolute accordingly. No order as to costs.

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